IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 34256 of 2006(C)

PETITIONER:

V.S.JEEVAKUMAR,
PROPRIETOR, AGRO FOODS & SPICES,
INDUSTRIAL DEVELOPMENT PLOT, ANGAMALY SOUTH.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS:

THE COMMERCIAL TAX OFFICER,
DEPARTMENT OF COMMERCIAL TAXES,
ANGAMALY.

ADDL. RESPONDENT:

2. THE DEPUTY TAHSILDAR
(REVENUE RECOVERY),
ALUVA.

(ADDL. 2ND RESPONDENT IS IMPLEADED AS PER ORDER DT.28.2.2007 IN I.A. NO.3129/2007.)

BY G.P. SRI.MOHAMMED RAFFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE APPELLATE TRIBUNAL ORDER IN T.A. NO.162/2004 DT.25.6.2005.

P2: TRUE COPIES OF THE REVISED ASSESSMENT ORDER FOR 1999-2000 DT.6.11.2006.

P3: TRUE COPY OF THE DEMAND NOTICE IN FORM NO.13 DT.NIL.

P4: .DO. NO.III DT.21.11.2006.

P5: .DO. NO.24 DT.21.11.2006.

P6: TRUE COPY OF THE ORIGINAL ASSESSMENT FOR 1999-2000 DT.30.10.2002.

P7: TRUE COPY OF FIRST APPEAL ORDER FOR 1999-2000 DT.23.10.2003.

P8: TRUE COPY OF DEMAND NOTICE IN FORM NO.1 DT.17.2.2007.

P9: .DO. NO.10 DT.17.2.2007.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.34256 of 2006

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Dated this the 29th day of May, 2007.

JUDGMENT

Petitioner's grievance is that the Assessing Officer has in revised assessment proceedings issued vide Ext.P2 failed to comply with the direction of the Tribunal in regard to enquiry under Section 30B(4) of the KGST Act. The question raised is whether the goods brought in petitioner's name from Tamil Nadu was really brought by the petitioner. The Section specifically provides that where the transaction is denied by the dealer, it is for the Department to trace the consignor or the transporter by conducting enquiry and levy tax on the person who brought the goods. Counsel for the petitioner rightly pointed out that the officer wrongly cast the burden on petitioner to establish the transaction by reference to Section 12 of the KGST Act. The Assessing Officer in remand proceedings has not considered or understood the scope of Section 30B(4) of the KGST Act and the same is evident from the order itself. In the circumstances, I set aside Ext.P2 revised assessment pertaining to addition of turnover in respect of transport of goods from Tamil Nadu to Kerala denied by the petitioner with direction to the officer to refer the matter to the Deputy Commissioner of

Commercial Taxes (Intelligence) to conduct enquiry and furnish information to the officer within three months from today. The Deputy Commissioner (Intelligence) is directed to conduct enquiry based on information gathered by the Department, furnish the details of the same to the officer who will hear petitioner's objections and issue fresh orders pursuant to the Tribunal's order and as directed above. All consequential demands against the petitioner attributable to the above tax-demand will stand cancelled. However, balance demands, if any, will stand sustained and can be recovered from the petitioner.

C.N.RAMACHANDRAN NAIR
Judge

pms